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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 ERICA FRASCO, et al.,

12 Plaintiffs,

13 v.

14 FLO HEALTH, INC., GOOGLE, LLC,  
15 FACEBOOK, INC., APPSFLYER, INC., and  
16 FLURRY, INC.,

17 Defendants.

Case No. 3:21-cv-00757-JD (consolidated)

**[PROPOSED] ORDER GRANTING  
ANALYTICS DEFENDANTS' MOTION  
TO DISMISS COMPLAINT PURSUANT  
TO FED R. CIV. P. 12(B)(1) AND 12(B)(6)  
AND GRANTING REQUEST FOR  
JUDICIAL NOTICE**

Judge: Hon. James Donato  
Court: Courtroom 11 – 19th Floor  
Date: February 10, 2022  
Time: 10:00 a.m.

~TITLE\_TOC~

**[PROPOSED] ORDER**

This matter is before the Court on Defendants Google LLC, Facebook Inc., AppsFlyer Inc., and Flurry Inc.'s (together, "Analytics Defendants") Motion to Dismiss Counts 5 and 9 through 14 of the Consolidated Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) ("Motion to Dismiss") and accompanying Request for Judicial Notice and Declarations in support thereof. After consideration of the briefs, Request for Judicial Notice and Declarations in support thereof, exhibits attached hereto, arguments of counsel, and all other matters presented, the Court concludes that Analytics Defendants' Motion to Dismiss should be granted pursuant to Federal Rule of Civil Procedure 12(b)(1) due to lack of subject-matter jurisdiction, and pursuant to Federal Rule of Procedure 12(b)(6) because Counts 5 and 9 through 14 in Plaintiffs' Consolidated Complaint fail to state a claim as a matter of law as to Analytics Defendants. Additionally, the Court denies leave to amend Counts 5 and 9 through 14 of Plaintiffs' Consolidated Complaint because any amendment would be futile.

The Court also grants Analytics Defendants' Request for Judicial Notice of Exhibits 1 through 17 pursuant to Federal Rule of Evidence 201.

Accordingly, IT IS HEREBY ORDERED THAT Analytics Defendants' Motion to Dismiss is **GRANTED**, and Counts 5 and 9 through 14 of the Consolidated Complaint are **DISMISSED WITH PREJUDICE** as to Analytics Defendants.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

By: HON. JAMES DONATO  
United States District Judge